U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19640823

Date: DEC. 15, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an industrial designer, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that he qualifies as a member of the professions holding an advanced degree, nor that he is an individual of exceptional ability. The Director also concluded that the Petitioner did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> > (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences,

arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

For the purpose of determining eligibility under section 203(b)(2)(A) of the Act, "exceptional ability" is defined as "a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business." 8 C.F.R. § 204.5(k)(2). The regulations further provide six criteria, at least three of which must be satisfied, for an individual to establish exceptional ability:

(A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;

(B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought;

(C) A license to practice the profession or certification for a particular profession or occupation;

(D) Evidence that the alien has commanded a salary, or other renumeration for services, which demonstrates exceptional ability;

(E) Evidence of membership in professional associations; or

(F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

8 C.F.R. § 204.5(k)(3)(ii).

In determining whether an individual has exceptional ability under section 203(b)(2)(A) of the Act, the possession of a degree, diploma, certificate, or similar award from a college, university, school or other institution of learning or a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of such exceptional ability. Section 203(b)(2)(C) of the Act.

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Director found that the Petitioner did not have an advanced degree or its equivalent and, moreover, did not establish he is an individual of exceptional ability. If the Petitioner does not establish eligibility either as an advanced degree professional or as an individual of exceptional ability, we need not determine whether a waiver of the job offer requirement, and thus of a labor certification, would be in the national interest. *See* section 203(b)(2) of the Act. For the reasons discussed below, the Petitioner did not establish that he is either an advanced degree professional or an individual of exceptional ability.

First, the record does not establish that the Petitioner is an advanced degree professional. In relevant part, to show that a self-petitioner is a member of the professions holding an advanced degree, "the petition must be accompanied by . . . evidence in the form of letters from current or former employer(s) showing that the [self-petitioner] has at least five years of progressive post-baccalaureate experience in the specialty," in addition to evidence of a foreign degree equivalent to a U.S. bachelor's degree. 8 C.F.R. § 204.5(k)(3)(i)(B).

The Petitioner asserts on appeal that he "has a foreign equivalent degree to a U.S. [b]accalaureate degree has [*sic*] almost 7 years of progressive post-baccalaureate work experience in the field of industrial design." The Petitioner submits a photocopy of a bachelor's degree in industrial design granted to him in 2007 by the University [redacted] in Brazil, accompanied by an English-language translation. However, neither the copy of the degree nor its translation in the record indicates that the foreign bachelor's degree is equivalent to a U.S. bachelor's degree, in order for the Petitioner to satisfy the threshold criterion as a member of the professions holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(2) (providing "a United States baccalaureate degree or a foreign *equivalent degree* followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree" (emphasis added)).

The Petitioner also references on appeal a letter from an employer and a letter from [redacted], an associate professor of graphic design at [redacted] University. Neither letter referenced on appeal is "a credentials evaluation performed by an independent credentials evaluator who has provided a credible, logical, and well-documented case for such an equivalency determination." *See* 6 *USCIS Policy Manual* E.9, https://www.uscis.gov/policy-manual. The letters also are not, in the alternative,

"a comparable evaluation performed by a school official who has the authority to make such determinations and is acting in his or her official capacity with the educational institution."[1] *See id.* On the contrary, [redacted] expressly states that his letter is "strictly my opinion and is not the opinion of the university with which I am affiliated or any of its departments or affiliates." We note that the record also contains a letter from [redacted], a professor emeritus of design at the University [redacted] however, his letter focuses on whether the endeavor may satisfy the criteria discussed in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016), and is silent on whether the Petitioner is an advanced degree professional.[2] The record does not otherwise contain an evaluation of the Petitioner's foreign degree. Based on the foregoing, the record does not establish whether the Petitioner's foreign degree is equivalent to a U.S. bachelor's degree.

Setting aside the preliminary issue of whether the Petitioner possesses a degree equivalent to a U.S. bachelor's degree, the record also does not establish the extent of the Petitioner's experience after receiving that degree. The employer letter, noted above, is written by the majority partner of a company founded by the Petitioner 2014.[3] However, as the Director observed in the decision, "[t]he letter does not offer specific dates of [the Petitioner's] roles and the amount of hours invested, whether full-time or part-time or if his experience is progressive in the specialty. It is also not evident when the [Petitioner] moved to [another company] in the United States and if his remote work at [the company he founded] is part-time or on an irregular basis." On appeal, the Petitioner does not directly address the Director's analysis of the employer letter; instead, he references the letter from [redacted], which opined that the Petitioner's work experience is equivalent to a master's degree. For the reasons noted, the record does not support [redacted]'s opinion. Regardless of the issue of whether the foreign degree may establish eligibility, given the limited information in the letter from the Petitioner's *current or former employer* about his post-baccalaureate experience, the record does not establish he may qualify as a member of the professions holding an advanced degree, or the equivalent of such. *See* 8 C.F.R. § 204.5(k)(3)(i)(b).

Turning to the exceptional ability factors in the alternative, the Director concluded that the Petitioner did not satisfy any of the criteria at 8 C.F.R. § 204.5(k)(3)(ii), of which three must be satisfied to establish exceptional ability. On appeal, the Petitioner does not assert, and the record does not support the conclusion, that he satisfies any of the exceptional ability factors.

In summation, the Petitioner has not established that he is a member of the professions holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(3)(i)(B). In the alternative, the Petitioner has not satisfied at least three of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii), and therefore has not established he is an individual of exceptional ability. Because the Petitioner did not establish eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, we need not address the Petitioner's assertions on appeal regarding whether a waiver of the job offer requirement, and thus of a labor certification, would be in the national interest. *See* section 203(b)(2) of the Act.

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[1] In any event, "[a]ny educational equivalency evaluation performed by a credentials evaluator or school official is solely advisory in nature; the final determination continues to rest with the [adjudicating USCIS] officer." *See* 6 *USCIS Policy Manual* E.9, https://www.uscis.gov/policy-manual.

[2] Moreover, the professor emeritus's letter does not establish whether it is an "evaluation performed by a school official who has the authority to make such determinations and is acting in his or her official capacity with the educational institution." *See* 6 *USCIS Policy Manual* E.9, https://www.uscis.gov/policy-manual.

[3] The petition filing date is February 2020.

III. CONCLUSION

The Petitioner has not established that he is a member of the professions holding an advanced degree. Additionally, as the Petitioner has not satisfied at least three of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii), we conclude that the Petitioner has not established that he is an individual of exceptional ability.

ORDER: The appeal is dismissed.